

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

BONNIE GEORGE, ED MCKINZIE,
TIM WORSTELL, CEDAR DERAPS,
CASEY WASSER, TAMMY
VOLKART, JAMES REHM, AND
RON METZGAR, BOBBIE LEE,
BRIAN IMMEKUS, and AMAZING
GRACE COMMUNITY CHURCH,

Plaintiffs,

v.

OMEGA FLEX, INC.; WARD
MANUFACTURING, LLC; AND
TITFLEX CORPORATION,

Defendants.

Case No. 6:17-cv-03114-MDH

ORAL ARGUMENT REQUESTED

DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendants Omega Flex, Inc., Ward Manufacturing, LLC, and Titeflex Corporation (collectively, "Defendants") jointly move the Court for summary judgment in their favor on all of Plaintiffs' claims. In support of this Motion, Defendants state as follows:

1. Plaintiffs filed their operative complaint in this action on January 31, 2019, asserting claims against Defendants for violations of the Missouri Merchandising Practices Act ("MMPA") (Counts I–III), conspiracy (Count IV), and unjust enrichment (Count V). Discovery in this matter closed on November 12, 2019. *See* Dkt. No. 111 ¶ C.1.

2. The Court should enter summary judgment for Defendants on all of Plaintiffs claims because there is no genuine dispute as to any material fact and Defendants are entitled to judgment as a matter of law on all those claims. *See* Fed. R. Civ. P. 56(a).

3. In particular, the Court should enter summary judgment for Defendants on Plaintiffs' MMPA claims because the undisputed facts confirm that Plaintiffs cannot establish essential elements of those claims, including (1) that they sustained an ascertainable loss of money or property; (2) that Defendants engaged in any unlawful practice; (3) that Defendants made any alleged misrepresentations "in connection with" Plaintiffs' purchases of their homes or corrugated stainless steel tubing; or (4) that Defendants' alleged conduct caused any losses to any of the Plaintiffs.

4. In addition, the Court should enter summary judgment for Defendants on Plaintiffs' claim for unjust enrichment because the undisputed facts show that Plaintiffs also cannot demonstrate essential elements of that claim, including that Defendants' alleged retention of benefits was unjust or inequitable.

5. Finally, the Court should enter summary judgment for Defendants on Plaintiffs' conspiracy claim, which cannot stand in the absence of any underlying tort and Plaintiffs' lack of injury.

6. The grounds in support of this Motion are more fully set forth in the accompanying Suggestions in Support of Motion for Summary Judgment, which are incorporated herein by reference.

7. Defendants respectfully request oral argument pursuant to Local Rule 7.0(e).

WHEREFORE, Defendants respectfully request that the Court grant summary judgment in their favor on all of Plaintiffs' claims.

Dated: November 26, 2019

Respectfully submitted,

/s/ Robert B. Ellis

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26th day of November 2019, a true and accurate copy of the foregoing was electronically filed with the CM/ECF system of the United States District Court for the Western District of Missouri, which sends notice to counsel of record via e-mail.

/s/ Kristen A. Page